IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

WP(C).No. 35864 of 2007(T)

AGAINST THE ORDER IN EP 212/2006 IN
OS.663/2005 of ADDL.M.C.,NEYYATTINKARA
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PETITIONER:

DHANAM, S/O.NESAN NADAR,
S.S.VILLA, KARAMOODU, PUTHICHAKONAM DESOM,
VELLARADA VLLAGE, NEYYATTINKARA.

BY ADV. G.SUDHEER

RESPONDENT:

SURENDRAN, S/O.KRISHNANKUTTY,
SANKARA VILASOM, VELLARADA DESOM, & VILLAGE,
NEYYATTINKARA.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.35864 of 2007

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Dated this the 4th day of December, 2007.

JUDGMENT

This Writ Petition is preferred against the order of the Munsiff II, Neyyattinkara in E.A.No.999 of 2007 in E.P.No.212 of 2006 in O.S.No.663 of 2005 whereby he refused to recall warrant of arrest. The suit is one for realisation of money, which was decreed ex parte and the writ petitioner herein has moved an application before the Munsiff for setting aside the ex parte decree on the ground that no service of notice was effected on him and he came to know about the proceedings only when the execution notice was received and immediately thereafter, he has filed an application for setting aside the ex parte decree as well as with a prayer to stay the execution of the decree and these matters are pending on the original side of the court. When such is the circumstance and when it is specifically averred that no notice had been served on him, it is desirable that the court disposes of that application first before proceeding to execute the

decree and send the writ petitioner to prison.

2. Therefore, the order under challenge is set aside and I direct the Executing Court not to proceed with the execution till a decision is taken on the application to set aside the ex parte decree and the stay application. Needless to say that the petition on the original side be disposed of within a period of six weeks from today.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

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